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IN THE

Supreme Court of the United States

OCTOBER TERM 1979

No. 79-428

GUY A. HUNT,

Petitioner,

vs.

NORTHWEST AIRLINES, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

QUESTION PRESENTED

Whether the scope of judicial review of a decision made by an air carrier board of adjustment established under 45 U.S.C. § 184 should be expanded to encompass claims that the substantive decision of the board of adjustment is incorrect.

II.

STATEMENT OF THE CASE

Petitioner's statement of the case generally is accurate, but it does not fully state the facts that led to petitioner's discharge by respondent. The Court of Appeals set forth those facts as follows:

> On March 16, 1976, [respondent's] management in Minneapolis received information that Pilot Hunt had obtained a prescription for the drug Percodan on the previous day. Percodan's usage is regulated, and a pilot is prohibited from taking the drug within twenty-four hours of flying. Because [respondent's] management believed that Hunt might have violated this regulation, they called him in Milwaukee where he was on a layover. Hunt reacted angrily and hung up the phone when his supervisors ordered him to report for a medical examination which would determine whether or not he had violated the regulation. Hunt then contacted two attorneys, who advised him to submit to the exam; in the meantime [respondent] left a message at the front desk grounding him. Hunt did not call his supervisors and indicate that he would take the exam. Instead he called crew control in Minneapolis and asked to be placed on the sick list.
>
> [Respondent] terminated Hunt's employment for failure to co-operate and for falsifying a claim for sick leave.

Hunt v. Northwest Airlines, Inc., 600 F.2d 176, 177 (8th Cir. 1979). Petitioner's discharge was upheld following an evidentiary hearing before the System Board of Adjustment, an arbitration panel established by agreement between petitioner's collective bargaining representative and respondent pursuant to the mandate of 45 U.S.C. § 184. Petitioner thereupon commenced the instant suit in District Court seeking to overturn the Board's decision on the grounds that (1) the Board erred in finding that petitioner was discharged for "just cause"; (2) the Board erred in finding that petitioner was not discharged because of personal animosity toward him by his superiors;

and (3) respondent allegedly denied petitioner what he has denominated "his right to contractual due process." Pet. for Cert. at 4.

Respondent moved for summary judgment on the ground that petitioner did not raise any claims within the scope of District Court review of a Board decision. The District Court granted respondent's motion without opinion. The Court of Appeals affirmed, relying upon well established precedents to hold that petitioner "failed to assert any claims within the narrow scope of review applied to system board decisions under 45 U.S.C. § 184. . . ." 600 F.2d at 179. The Court of Appeals rejected petitioner's unprecedented contention "that board of adjustment decisions under section 184 should have a broader scope of judicial review than that allowed under similar statutory provisions governing the National Railroad Adjustment Board (NRAB) decisions under [45 U.S.C. §] 153." *Id.* at 178.

III.

ARGUMENT

A. The Decision Below Is Correct.

In a remarkable display of candor, petitioner admits that he "does not take issue with the Court of Appeals' analysis of precedent." Pet. for Cert. at 4. Petitioner could not reasonably do so, for the cases unanimously hold that the scope of judicial review of air carrier system board decisions does not encompass the claims petitioner sought to raise in the District Court. *E.g., Eastern Air Lines, Inc. v. Transport Workers Union*, 580 F.2d 169, 172 (5th Cir. 1978); *Bernhardt v. American Airlines, Inc.*,

511 F.2d 1219, 1220 (9th Cir. 1975); *Giordano v. Modern Air Transport/IBT System Board of Adjustment*, 504 F.2d 882, 883 (5th Cir. 1974); *Rosen v. Eastern Air Lines, Inc.*, 400 F.2d 462, 463-464 (5th Cir. 1968), *cert. denied*, 394 U.S. 959 (1969); *Northwest Airlines, Inc. v. Air Line Pilots Association*, 373 F.2d 136, 139-140 (8th Cir.), *cert. denied*, 389 U.S. 827 (1967); *Rossi v. Trans World Airlines, Inc.*, 350 F. Supp. 1263, 1269-1270, 1273 (C.D. Cal. 1972), *aff'd*, 507 F.2d 882, 883 (9th Cir. 1974). Petitioner instead asks this Court, as he asked the courts below, "to depart from conventional interpretations of the subject Railway Labor Act provisions concerning judicial review of arbitration awards." Pet. for Cert. at 4-5. A brief review of the pertinent statutes and cases demonstrates, however, that there is no basis upon which to overturn the large body of precedent arrayed against petitioner.

The Railway Labor Act, 45 U.S.C. § 151 *et seq.*, governs the conduct of employers, employees, and employees' collective bargaining representatives in the railroad industry. Section 153 establishes a National Railroad Adjustment Board that is empowered to decide "disputes between an employee . . . and a carrier . . . growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. . . ." 45 U.S.C. § 153 First (i). Section 153 also allows railroads and their employees to establish by mutual agreement system, group, or regional boards of adjustment to decide such disputes instead of the National Railroad Adjustment Board. 45 U.S.C. § 153 Second. The scope of judicial review of decisions by the National Railroad Adjustment Board and of group, system, and regional boards is extremely narrow and does not encompass the sorts of claims that petitioner has advanced in the instant case. *See* 45 U.S.C. § 153 First (p), (q); *Gunther v. San Diego & Arizona Eastern Railway Co.*, 382 U.S. 257 (1965); *Kotakis v. Elgin, Joliet & Eastern Railway Co.*, 520 F.2d 570, 574-575 (7th Cir.), *cert. denied*, 423 U.S. 1016 (1975); *Diamond v. Terminal Railway Alabama State Docks*, 421 F.2d 228, 233 (5th Cir. 1970); *Edwards v. St. Louis-San Francisco Railroad Co.*, 361 F. 2d 946, 952-953 (7th Cir. 1966); *D'Elia v. New York, New Haven and Hartford Railroad*, 338 F.2d 701, 702 (2d Cir. 1964), *cert. denied*, 380 U.S. 978 (1965); *McDonald v. Penn Central Transportation Co.*, 337 F. Supp. 803, 805-806 (D. Mass. 1972).

The 1936 Air Carrier Amendments to the Railway Labor Act, 45 U.S.C. § 181 *et seq.*, extend to airlines and their employees all the provisions of the Railway Labor Act except those of § 153. *See* 45 U.S.C. §§ 181-182. In contrast to § 153, the 1936 Air Carrier Amendments *require* airlines and their employees to establish system, group, or regional boards of adjustment to decide the class of disputes described in § 153. 45 U.S.C. § 184. The Air Carrier Amendments also authorize the National Mediation Board to establish a National Air Transport Adjustment Board, similar in structure and function to the National Railroad Adjustment Board, "[w]hen, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment to provide for the prompt and orderly settlement of disputes between" airlines and their employees. 45 U.S.C. § 185. To date, the National Mediation Board has not established a National Air Transport Adjustment Board.

The 1936 Air Carrier Amendments do not expressly provide for judicial enforcement of awards made by air carrier system, group, or regional boards of adjustment established pursuant to § 184. Nevertheless, in *International Association of Machinists v. Central Airlines, Inc.*, 372 U.S. 682 (1963), this Court held that such awards are enforceable in the federal courts just as awards under § 153 of the Railway Labor Act are, reasoning that:

> National Railroad Adjustment Board awards were made enforceable in the federal courts by the 1934 amendments [to the Railway Labor Act], and the awards under voluntary arbitration agreements were likewise made expressly enforceable by the statute. There is no reason to believe that [in enacting the Air Carrier Amendments] in 1936 Congress discarded for an entire industry an element essential to a reliable system of settling disputes under existing contracts or that it contemplated awards by adjustment boards the enforceability of which depended entirely upon the desires of the parties or upon state statutes or court decisions.

372 U.S. at 695. Following the same reasoning, the lower federal courts uniformly have held that the scope of judicial review of awards by air carrier boards of adjustment established under § 184 is precisely the same as the scope of judicial review of awards by railroad boards of adjustment established under § 153. As one court has explained:

> [T]he courts have treated such airline pilot adjustment board decisions the same as they have handled Section 153 railroad adjustment board decisions, a policy flowing from legislative intent as well as from statutory parallelism. International Association of Machinists, AFL-CIO v. Central Airlines, Inc., 372 U.S. 682, 83 S. Ct. 956, 10 L. Ed. 2d 67 (1963).
>
> The upshot of this parallel treatment is that Pilot Board decisions, like railroad arbitration findings, may operate to constitute a bar to an action in court. This is especially true when the decision is reached on the merits.

Rossi v. Trans World Airlines, Inc., supra, 350 F. Supp. at 1269 (footnote omitted); *accord, e.g., Giordano v. Modern Air Transport/IBT System Board of Adjustment, supra,* 504 F.2d at 883. The Court of Appeals followed these cases and this reasoning in the instant case. 600 F.2d at 178-179.

Despite this Court's *Central Airlines* decision, and the unbroken line of cases following it, petitioner contends that the scope of judicial review of decisions by air carrier boards of adjustment established under § 184 should be broader than the scope of judicial review of decisions by railroad boards of adjustment established under § 153. *See* Pet. for Cert. at 5-6. He argues that the decision of the National Mediation Board not to establish a National Air Transport Adjustment Board under § 185 frustrates an asserted congressional intent "that there be nationwide uniformity in interpretation and disposition of such disputes." Pet. for Cert. at 6. In order to fulfill this supposed congressional intent, petitioner concludes, the federal courts should undertake to review the substantive correctness of decisions by air carrier boards of adjustment.

Petitioner's contention is without merit because it misapprehends the congressional intent behind § 185. As

noted previously, that section authorizes the establishment of a National Air Transport Adjustment Board "[w]hen, *in the judgment of the National Mediation Board,* it shall be necessary. . . ." (emphasis supplied). The House Report upon which petitioner relies, Pet. for Cert. at 5-6, states in similar fashion that a National Air Transport Adjustment Board shall be established "only when deemed necessary by the Mediation Board." H. R. Rep. No. 2243, 74th Cong., 2d Sess. 1 (1936). Section 185 and its legislative history thus demonstrate Congress' clear intent that the National Mediation Board, not the courts, should decide whether and when the need for nationwide uniformity or some other circumstance requires the designation of a national tribunal to hear the substance of disputes cognizable under § 184. Because § 185 commits this decision to the National Mediation Board, the court below correctly declined to substitute its judgment for that of the National Mediation Board by transforming the district courts into a national tribunal to hear the substance of such disputes.

In addition, although petitioner emphasizes the importance of uniformity of decisions in disputes cognizable under § 184, he conspicuously does not assert that such uniformity presently is lacking. Nor does he attempt to demonstrate that some lack of uniformity has resulted in prejudice to himself or anyone else. Because petitioner thus has failed to show any need to broaden the scope of judicial review in the name of uniformity, the court below correctly refused to do so.

As the foregoing demonstrates, the decision below follows a long line of precedents. Petitioner advances no valid reason to overturn those precedents. Certiorari therefore should be denied.

B. The Question Presented Is Not Certworthy.

As petitioner concedes, there is no conflict among the lower federal courts over the question presented; the precedents unanimously are opposed to his position. *See* Supreme Court Rule 19 (1)(b). Nor does petitioner contend that the decision below conflicts with the applicable decisions of this Court. *See id.* In fact, the decision below follows and is in complete conformity with this Court's decisions. *See Gunther v. San Diego & Arizona Eastern Railway Co., supra; International Association of Machinists v. Central Airlines, Inc., supra.*

Petitioner does assert that the court below "has decided an important question of federal law which has not been, but should be, decided by this Court." Pet. for Cert. at 7; *see* Supreme Court Rule 19(1)(b). In support of this assertion, however, petitioner points only to the "consequences of the arbitration decision to Petitioner. . . ." Pet. for Cert. at 7. Those consequences do not make the question presented an important one meriting the grant of certiorari. Because petitioner cites no other reason supporting the exercise of this Court's discretion to grant his petition, certiorari should be denied.

IV.

CONCLUSION

The petition should be denied because the decision below is correct and because the question presented is not certworthy.

Dated: October 12, 1979.

Respectfully submitted,

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